

Exhibit C

(Emergency Stay Motion)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re

LTL MANAGEMENT LLC,¹

Debtor.

Chapter 11

Case No. 21-30589 (JCW)

**DEBTOR’S EMERGENCY MOTION TO ENFORCE THE
AUTOMATIC STAY AGAINST TALC CLAIMANTS WHO SEEK TO PURSUE
THEIR CLAIMS AGAINST THE DEBTOR AND ITS NON-DEBTOR AFFILIATES**

The above-captioned debtor (“LTL” or the “Debtor”) moves the Court for the entry of an interim and final order enforcing the automatic stay against tort claimants (collectively, the “Plaintiffs”)² who, despite the imposition of the automatic stay, seek to recover on their claims against the Debtor by asserting those same claims against the Debtor’s ultimate parent, Johnson & Johnson (“J&J”), the Debtor’s other non-debtor affiliates, and the former Johnson & Johnson Consumer Inc. (including all former names and historical forms, “Old JJCI”). In support of this Emergency Motion, the Debtor respectfully represents as follows:

Preliminary Statement

Shortly after the commencement of this chapter 11 case on October 14, 2021 (the “Petition Date”), the Debtor filed a notice of suggestion of bankruptcy in thousands of pending talc lawsuits to inform the courts and the parties about the commencement of this case and the applicability of the automatic stay to their pending lawsuits. The very next day numerous Plaintiffs responded. Using virtually identical language, they informed the applicable

¹ The last four digits of the Debtor’s taxpayer identification number are 6622. The Debtor’s address is 501 George Street, New Brunswick, New Jersey 08933.

² A list of Plaintiffs’ counsel who have, as the filing of this Motion, released statements or taken actions indicating an intent to take actions that violate the automatic stay, is attached hereto as Exhibit A.

courts and the Debtor that they have no intention of respecting the Debtor’s notice of the automatic stay and instead will continue to pursue their talc claims against the Debtor by pursuing those same claims against (i) Old JJCI – an entity that no longer exists and whose talc-related liability now resides in the Debtor, (ii) J&J and (iii) the Debtor’s other non-debtor affiliates. As stated in a written communication from the plaintiffs’ ovarian cancer steering committee (the “Plaintiffs’ Steering Committee”):³

[t]he Plaintiffs’ Steering Committee opposes any stay of proceedings against [J&J] or [Old JJCI]. Neither company has filed bankruptcy. The law does not provide for an automatic stay of cases against non-debtors

The Plaintiffs are incorrect. As this Court recently affirmed based on well-established precedent in the Fourth Circuit, actions against Non-Debtor parties to recover claims against the Debtor are automatically stayed under section 362 of the Bankruptcy Code. This is because either the non-Debtor parties share such an identity of interest with the Debtor that the Debtor is, in effect, the real-party defendant, or the claims are property of the Debtor’s estate. See Aldrich Pump LLC v. Those Parties to Actions Listed on Appendix A to Complaint (In re Aldrich Pump LLC), 2021 WL 3729335, at *30-32 (Bankr. W.D.N.C. Aug. 23, 2021); DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC), 2021 WL 3552350, at *27-28 (Bankr. W.D.N.C. Aug. 11, 2021). In addition, the commencement or continuation of the talc claims against Old JJCI or J&J is for the purpose of liquidating and recovering claims against the Debtor. Thus, such an action is expressly enjoined by section 362(a)(1) because it constitutes an “action or proceeding against the debtor” to recover a prepetition claim. Permitting the continued piecemeal litigation of such claims in the tort system

³ The Plaintiffs Steering Committee represents 35,000 plaintiffs in talc-related lawsuits against Old JJCI and J&J in the federal multi-district litigation in the United States District Court for the District of New Jersey, No. 16-02738.

notwithstanding the automatic stay would undoubtedly interfere with, and potentially end, the Debtor's reorganization case. For these reasons, the Plaintiffs' pursuit of claims against the Debtor's non-debtor affiliates, including J&J, to recover their claims against the Debtor is a violation of the automatic stay that this Court should halt.

Factual Background

1. On the Petition Date, the Debtor commenced this reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to manage its property and operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. In support of this Emergency Motion, the Debtor incorporates by reference the *Declaration of John K. Kim in Support of First Day Pleadings* [Dkt. 5] (the "First Day Declaration").

Corporate History

3. On October 12, 2021, Old JJCI implemented an internal corporate restructuring (the "2021 Corporate Restructuring"), as described below. First Day Decl. ¶ 16. As a result of that restructuring, Old JJCI ceased to exist and two new entities were created: (a) the Debtor, which was initially formed as a Texas limited liability company and then converted into a North Carolina limited liability company; and (b) a second entity, which was initially formed as a Texas limited liability company and then merged into a New Jersey corporation that was its direct parent (as well as the direct parent of the Debtor), whereupon this entity changed its name to "Johnson & Johnson Consumer Inc." ("New JJCI"). Id.

4. New JJCI manufactures and sells a broad range of products used in the baby care, beauty, oral care, wound care and women's health-care fields, as well as over-the-counter pharmaceutical products. Id. ¶ 19. The Debtor's ultimate parent company,

The 2021 Corporate Restructuring

The 2021 Corporate Restructuring was implemented to enable the Debtor to fully resolve talc-related claims through a chapter 11 reorganization without subjecting the entire Old JJCI enterprise to a bankruptcy proceeding. Id. ¶ 21.

- a. Old JJCI ceased to exist;
- b. The Debtor, as well as New JJCI, were formed;
- c. The Debtor received certain of Old JJCI's assets, as set forth below, and became solely responsible for certain of its liabilities, including Old JJCI's liabilities arising from talc-related claims against it (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws) (the "Debtor Talc Claims");
- d. New JJCI was allocated all other assets of Old JJCI and became solely responsible for all other liabilities of Old JJCI;
- e. A funding agreement (the "Funding Agreement") was established between New JJCI, J&J and the Debtor for the purpose of ensuring that the Debtor

Id. ¶¶ 22-23.

- a. Old JJCI's rights and interests as payee under the Funding Agreement (as discussed below, J&J and New JJCI have agreed to advance \$2 billion under the Funding Agreement into a qualified settlement trust);
- b. A bank account and approximately \$6 million in cash;
- c. All contracts of Old JJCI related to its talc-related litigation, including settlement agreements, interests in qualified settlement trusts, indemnity rights, insurance coverage rights, service contracts and engagement and retention contracts, if any;
- d. All equity interests in Royalty A&M LLC ("Royalty A&M"), which owns a portfolio of royalty revenue streams, including royalty revenue streams based on third-party sales of certain products, a business that is projected to generate approximately \$50 million in revenue per year over the next five years and has the ability to borrow up to \$50 million from J&J on terms consistent to those provided to other J&J affiliates;
- e. Causes of action that relate to the assets and liabilities allocated to the Debtor;

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8. In total, the Debtor’s value is approximately \$373.1 million, without taking into account the Funding Agreement with New JJCI and J&J. Id. ¶ 26. In addition, J&J and New JJCI have committed to fund as early as January 31, 2022 a North Carolina trust that will constitute a “qualified settlement fund” with an aggregate amount of \$2 billion for the payment of current and future talc-related claims asserted against or related to the Debtor. Id. ¶ 28.

9. Cosmetic talc litigation against the Debtor has focused primarily on JOHNSON'S® Baby Powder (hereinafter, "Johnson's Baby Powder") as a purported cause of ovarian cancer and mesothelioma. Id. ¶ 32. For over 125 years Johnson's Baby Powder has been used by hundreds of millions of consumers worldwide. Id.

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13. Even though J&J has not manufactured or sold talc-containing products for over 40 years, the Debtor Talc Claims are asserted in virtually every case against both the Debtor and J&J. In many jurisdictions, the plaintiffs seek to hold the Debtor and J&J jointly and severally liable for the Debtor Talc Claims.

14. The Debtor believes that it has rights to insurance coverage for its Debtor Talc Claims. *Id.* ¶ 46. In particular, the Debtor has access to primary and excess liability

19. In total, the limits of solvent primary and excess insurance policies issued to J&J by third-party insurers that potentially cover talc-related liabilities are in excess of \$1.95 billion. *Id.* ¶ 52.

21. In May 2019, certain of the Debtor's third-party insurers filed a lawsuit against Old JJCI, J&J and Middlesex in the Superior Court of Middlesex County (Docket No.

22. As of the Petition Date, tens of thousands of talc-related lawsuits are pending in jurisdictions throughout the United States. See id. ¶ 42. Absent its bankruptcy filing, the Debtor expects that thousands of additional ovarian cancer and mesothelioma cases would have been filed against it for decades to come. Id. ¶ 45.

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The Plaintiffs' Leadership opposes any effort to stay these proceedings sought by [J&J, Old JJCI] or any other related entities. The law does not provide for an automatic stay of cases against non-debtors. The Plaintiffs' Leadership will be filing an opposition to any stay filed and will request an opportunity to be heard on this issue if it should arise.

Virtually identical statements have been filed in the MDL, as referenced above, and the multicounty litigation pending in New Jersey as well as in lawsuits in New York, Georgia and Florida. The judge presiding over the MDL has asked for submissions by the parties this week regarding whether the stay applies to non-debtor parties. The counsel in these proceedings represent more than 35,000 claims against the Debtor and J&J.

Jurisdiction

27. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. In particular, this Court has “arising under” jurisdiction to determine that section 362(a) of the Bankruptcy Code prohibits the commencement or continuation of the Debtor Talc Claims against the Debtor and its non-debtor affiliates. A bankruptcy court has jurisdiction for matters “arising under” provisions of the Bankruptcy Code such as section 362. See e.g., A.H. Robins Co. v. Piccinin, 788 F.2d 994, 999-1000 (4th Cir. 1986); DBMP, 2021 WL 3552350, at *18; In re Brier Creek Corp. Ctr. Assocs. Ltd., 486 B.R. 681, 685 (Bankr. E.D.N.C. 2013).

28. This is a core proceeding pursuant to 28 U.S.C. § 157(b). For example, and without limitation, this matter is a core proceeding under (a) 28 U.S.C. § 157(b)(2)(A) (relating to “matters concerning the administration of the estate”) because the outcome will directly affect the Debtor’s ability to achieve a successful reorganization to resolve all current and future talc claims and (b) 28 U.S.C. § 157(b)(2)(G) (relating to “motions to terminate, annul,

29. The Debtor seeks an order enforcing the automatic stay against Plaintiffs who have threatened or otherwise taken actions to recover their talc claims against the Debtor by asserting those same claims against Old JJCI, J&J or the Debtor's other non-debtor affiliates.

30. The automatic stay imposed by section 362(a) of the Bankruptcy Code allows “the bankruptcy court to centralize all disputes concerning property of the debtor’s estate in bankruptcy court so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas.” Shugrue v. Air Line Pilots Ass’n, Int’l (In re Ionosphere Clubs, Inc.), 922 F.2d 984, 989 (2d Cir. 1990); Aldrich Pump, 2021 WL 3729335, at [¶ 181] (ruling that claims against third parties which “necessarily result in the liquidation and recovery of claims against the Debtors outside of the bankruptcy case” are barred by the automatic stay); see also 11 U.S.C. § 362(a). Fourth Circuit precedent recognizes that the automatic stay of section 362(a) may apply of its own force to prohibit the prosecution of Debtor Talc Claims against J&J and its non-debtor affiliates. Indeed, this Court has recently ruled that the automatic stay applies to actions against non-debtor parties under very similar circumstances. See Aldrich Pump, 2021 WL 3729335, at *31-32; DBMP, 2021 WL 3552350, at *28 (same).

31. Section 362(a)(1) of the Bankruptcy Code prohibits the “commencement or continuation . . . of a judicial . . . action or proceeding against the debtor that was or could

33. Likewise, as explained above, all of J&J's liabilities associated with Johnson's Baby Powder and other talc-containing products were transferred to Old JJCI when it assumed those liabilities in 1979. Thus, the pursuit of the Debtor Talc Claims against J&J is an effort to liquidate and recover claims for liabilities that were transferred to the Debtor's predecessor in 1979 and are now liabilities of the Debtor. Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282, 287 (2d Cir. 2003) (automatic stay may apply to non-debtors, specifically where there is a claim to establish an obligation of which the debtor is a guarantor) (citing McCartney v. Integra National Bank North, 106 F.3d 506, 510-11 (3d Cir. 1997)).

An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case.

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37. Here, as in Robins, and more recently in DBMP and Aldrich Pump, New JCI and J&J share an identity of interest with the Debtor in respect of the Debtor Talc Claims such that the Debtor is the real-party defendant in the Debtor Talc Claims brought against the non-debtor affiliate. As discussed above, litigating, settling or attempting to establish the value the Debtor Talc Claims against the non-debtor affiliate would liquidate claims against the Debtor, including by triggering existing indemnification and similar obligations of the Debtor to such entities. Such litigation also creates risks of binding the Debtor through *res judicata* and collateral estoppel, and creating an evidentiary record that prejudices the Debtor. Because the Debtor is the real-party defendant in any suit seeking to liquidate and recover on account of a Debtor Talc Claim, section 362(a)(1) stays such actions.

38. Section 362(a)(3) bars plaintiffs from bringing suits that would deplete the Debtor's insurance on account of Debtor Talc Claims because the insurance coverage is property

of the estate. See Aldrich Pump, 2021 WL 3729335, at *33 (“[S]ection 362(a)(3) bars plaintiffs from bringing actions against the Debtors’ Insurers on account of Aldrich/Murray Asbestos Claims because the insurance coverage is also property of the estate.”); see also Robins, 788 F.2d at 1001 (agreeing with “the weight of authority” that insurance contracts are property of the estate and that “[a]ccordingly actions ‘related to’ the bankruptcy proceedings against the insurer . . . are to be stayed under section 362(a)(3)”); In re Johns-Manville Corp., 40 B.R. 219, 231 (S.D.N.Y. 1984) (“determin[ing] that Manville’s insurance is property of the estate under the Code and that actions by third parties against the bankrupt’s insurers are automatically stayed upon the filing of the petition”).

39. J&J and the Debtor are both covered for talc-related claims under various shared insurance policies. The right to coverage under these insurance policies is property of the Debtor’s estate, and prosecution of a claim against J&J, a co-insured party, would deplete proceeds available to the Debtor, thereby reducing assets available to the bankruptcy estate. See, e.g., In re Quigley Co., Inc., 676 F.3d 45, 53-54, 58 (2d Cir. 2012) (“[W]here litigation of the [lawsuits against non-debtor] would almost certainly result in the drawing down of insurance policies that are part of the bankruptcy estate of [debtor], the exercise of bankruptcy jurisdiction to enjoin these suits was appropriate.”); Robins, 788 F.2d at 1008 (sustaining injunction and transfer of claims against non-debtors in part because such claims, if successful, would reduce insurance funds available to debtor’s estate); In re Montreal Me. & Atl. Ry., Ltd., No. 1:13-MC-00184-NT, 2014 WL 1155419, at *10 (D. Me. Mar. 21, 2014) (finding jurisdiction and transferring non-debtors’ cases based on shared insurance); Raudonis, as trustee for the Raudonis 2016 Revocable Trust v. RealtyShares, Inc., 507 F.Supp 378, 384 (D. Mass. 2020) (“Because courts generally recognize insurance policy as ‘property’ under 11 U.S.C. § 541(a)(1) – and thus

C. Actions Seeking to Hold Non-Debtor Affiliates Liable for the Debtor Talc Claims Based on “Derivative Liability” Are Property of the Debtor’s Estate and Automatically Stayed.

42. Section 362(a) of the Bankruptcy Code states that the filing of a petition “operates as a stay, applicable to all entities, of . . . (3) any act . . . to exercise

852 F.2d at 136 (citations omitted). “Thus,” as Judge Mullen has observed, “in the Fourth Circuit the rule is settled that Code § 362(a)(3) stays automatically—without a restraining order—a creditor’s claim against a third-party that the debtor can assert for the benefit of the estate.” Litchfield Co. of S.C. Ltd. P’ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P’ship), 135 B.R. 797, 803 n.4 (W.D.N.C. 1992).

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(a) The Debtor's Standing To Bring Alter Ego and Successor Liability Claims Under State Law

45. To determine which state law is the “relevant state law” for this inquiry, courts use the choice-of-law rules of the forum state. See Butler v. Enhanced Equity Fund II, LP (In re Am. Ambulette & Ambulance Serv. Inc.), 560 B.R. 256, 262 & 269 (Bankr. E.D.N.C. 2016). Accord M-Tek Kiosk, Inc. v. Clayton, No. 1:15CV886, 2016 WL 2997505 at *5

7 At the time of the 2021 Corporate Restructuring when it was formed, the Debtor was a Texas limited liability company. In addition, during the 2021 Corporate Restructuring, Old JJCI (which was formerly a New Jersey corporation) became an entity formed under Texas law. See First Day Decl. ¶ 16. Thus, it is conceivable that a claimant might contend that, under the “internal affairs doctrine,” Texas (or even New Jersey) law instead governs whether a Debtor had the right to assert the alleged alter ego claim when these bankruptcy cases were commenced, depending on what facts are alleged to support the claim and when the claim allegedly arose. See Keene, 164 B.R. at 847 n.3.

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48. In Steyr, the Fourth Circuit held that a debtor corporation had the right under Virginia law to bring an alter ego claim against its principal and an affiliate, and that the claim became property of the estate when the corporation filed its chapter 7 case. 852 F.2d at 136. The court reasoned that “[u]nder Virginia law, a corporation has an equitable interest in the assets of an alter ego because the corporation and the alter ego are ‘one and the same.’” Id. (quoting Pepper v. Dixie Splint Coal Co., 165 Va. 179, 181 S.E. 406 (1935)). The Fourth Circuit in Steyr held that section 541(a) “brings the right of [the debtor corporation] to proceed against its alter ego and claim its equitable interest in assets of the alter ego into the bankruptcy estate,” id., endorsing the Fifth Circuit’s analysis of the same question under Texas law in S.I.

state’s law governs” because, under either Pennsylvania or Delaware law, alter ego claims were estate property “to the extent the claims qualify as ‘general’”). In re Emoral Inc., 740 F.3d 875, 879 n.2 (3d Cir. 2014) (whether debtor had right to bring successor liability claim was governed by either New Jersey or New York law, and “the two states’ relevant applicable legal standards are identical, rendering a choice-of-law analysis unnecessary”); Sterne Agee Grp., Inc. v. Robinson (In re Anderson & Strudwick, Inc.), No. 14-03175, 2015 WL 1651146, *6 n.4 (Bankr. E.D. Va. April 8, 2015) (same for New York and Virginia successor liability law, which are “‘essentially the same’”).

Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.), 817 F.2d 1142, 1152-53 (5th Cir. 1987).

49. In analyzing Texas law on this issue, the Fifth Circuit in S.I. Acquisition concluded:

Not surprisingly, we have found no Texas law suggesting that a corporation could or could not itself bring an alter ego claim. Even so, we note that the predominate policy of Texas alter ego law is that the control entity that has misused the corporate form will be held accountable for the corporation's obligations. [Citation omitted]; see also Valdes [v. Leisure Resource Group, Inc., 810 F.2d 1345, 1353 (5th Cir. 1987)] (alter ego doctrine applies to hold dominant entity responsible for subservient company's debt since dominant entity was responsible for creating the debts). Since the corporation has an independent existence at law, we do not believe it is inconsistent in light of the above policy to say that a corporation may pierce its own corporate veil and hold accountable those who have misused the corporation in order to meet its corporate obligations.

817 F.2d at 1152. In reaching that conclusion, the Fifth Circuit found persuasive Judge Jones' explanation in In re Western World Funding, Inc., 52 B.R. 743 (Bankr. D. Nev. 1985), that "[t]he corporation may be thought of as a separate legal entity which 'has an interest of its own in assuring that it can meet its responsibility to its creditors,' [citation omitted] while at the same time allowing it to argue that it should be deemed to be identical to its alleged alter ego for purposes of paying those creditors." Id. at 784.

50. In Holcomb, Judge Bullock adopted Magistrate Judge Eliason's extensive review of North Carolina law governing alter ego claims. 120 B.R. at 38-42. Based on that review, Magistrate Judge Eliason rejected the argument that North Carolina law was "radically different" from the Nevada law applied by Judge Jones in Western World Funding and the Virginia law applied by the Fourth Circuit in Steyr. 120 B.R. at 39-40. Instead, he found:

Having completed this examination of North Carolina law, the Court finds it to be entirely consistent with the Fourth Circuit's

requirement in Steyr that a corporation may be said to have an equitable interest in the assets of an alter ego when they are one and the same. Steyr, 852 F.2d at 136. Thus, in North Carolina, alter ego claims, which are based on factors which establish that the controlled corporation and the alter ego have the same identity, belong to the bankruptcy estate and must be prosecuted by the trustee.

Id. at 41-42. Magistrate Judge Howell reached the very same conclusion in Alvarez:

North Carolina law, like Virginia law, treats a corporation and its alter-ego as “one and the same” Fischer Inv. Capital, Inc. v. Catawba Dev., Corp., 689 S.E.2d 143, 147 (N.C. Ct. App. 2009) (quoting Strategic Outsourcing, Inc. v. Stacks, 625 S.E.2d 800, 804 (N.C. Ct. App. 2006)). Consistent with the Fourth Circuit’s holding in [Steyr], a corporation has an interest in the assets of its alter ego, and, thus, an alter ego claim is the property of the estate for purposes of Section 541(a)(1).

2011 WL 7025906 at *3 (citing Steyr, 852 F.2d at 136, and Holcomb, 120 B.R. at 41-42).

Relying on Holcomb and Alvarez, the bankruptcy court in this District has repeatedly held that a corporation has the right to sue an alleged alter ego under North Carolina law and that such claim becomes property of the estate when the corporation files a bankruptcy case. Midstate Mills, 2015 WL 5475295 at *7; Mitchell, 2003 Bankr. LEXIS 2468 at *26-28.

51. To the extent that a party might assert instead that Texas or New Jersey law governs whether the Debtor has standing to bring an alter ego claim against a Non-Debtor Affiliate, courts applying the law from both states have reached the same conclusion. See S.I. Acquisition, 817 F.2d at 1153 (corporation had right under Texas law to bring alter ego claim, which became property of estate when corporation filed bankruptcy case); Tsai v. Bldgs. by Jamie, Inc. (In re Bldgs. by Jamie, Inc.), 230 B.R. 36, 43 (Bankr. D.N.J. 1998) (corporation can sue alter ego under New Jersey law, noting “majority of courts in other jurisdictions that have addressed the issue of authority to pursue an alter ego action on behalf of a corporate debtor have also held that the trustee has standing” to assert such claim).

(c) The Debtor Also Had Standing To Bring Successor Liability Claims

52. As is the case in most states, the general rule is, “where one company sells or otherwise transfers all its assets to another company, the latter is not liable for the debts and liabilities of the transferor.’ City of Richmond v. Madison Mgmt. Grp., Inc., 918 F.2d 438, 450 (4th Cir. 1990) (quoting 15 W. Fletcher, Cyclopedia of the Law of Private Corporations, § 7122, at 188 (rev. perm. ed. 1983)).” Leonard v. Bed, Bath & Beyond, Inc., No.5:15-CV-00284, 2016 WL 158587, *2 (E.D.N.C. Jan. 8, 2016). Most states recognizes four exceptions to the general rule:

(1) where there is an express or implied agreement by the purchasing corporation to assume the debt or liability; (2) where the transfer amounts to a de facto merger of the two corporations; (3) where the transfer of assets was done for the purpose of defrauding the corporation’s creditors; or (4) where the purchasing corporation is a “mere continuation” of the selling corporation in that the purchasing corporation has some of the same shareholders, directors, and officers.

Leonard, 2016 WL 158587 at *3 (citing G.P. Publ’ns, Inc. v. Quebecor Printing-St. Paul, Inc., 481 S.E.2d 674, 679 (N.C. Ct. App. 1997) (citing Budd Tire Corp. v. Pierce Tire Co., 370 S.E.2d 267, 269 (N.C. Ct. App. 1988))).

53. In Mitchell, this Court noted that whether state law allows a corporation (or its receiver) to recover on a claim against an alleged successor under one of these exceptions “is apparently a question of first impression under North Carolina law.” 2003 Bankr. LEXIS 2468 at *28-*29. Finding that “[s]uch a claim is substantially similar to an alter ego claim because it seeks to recover assets of a corporation and to make these available to satisfy creditor claims,” the Court held that the debtor could assert a successor liability claim under North Carolina law and that the claim became property of the estate under section 541(a) when the corporation’s chapter 7 case was commenced. Id. (citing Keene, 164 B.R. at 853).

54. As was this Court's reasoning in Mitchell, Judge Bernstein's reasoning in Keene was based on the finding that "[t]he principles relating to successor tort liability, and the results which they are designed to achieve, are similar to piercing the corporate veil." 164 B.R. at 852. Applying New York law on successor liability that was the same as the North Carolina law detailed in Leonard, *id.*, Judge Bernstein declared that the automatic stay barred the asbestos claimants from pursuing their actions against the debtor's affiliates on successor liability claims, explaining that "the remedy against a successor corporation for the tort liability of the predecessor is, like the piercing remedy, an equitable means of expanding the assets available to satisfy creditor claims" and that, for "the same reasons stated with respect to the piercing claims, claims based upon successor liability should be asserted by the trustee on behalf of all creditors." *Id.* at 853.

55. The Third Circuit reached the same conclusion in In re Emoral Inc., 740 F.3d 875 (3d Cir. 2014). In that case, the debtor manufactured a chemical used in food flavoring that gave rise to personal injury claims. After it sold operating assets to a transferee, the debtor filed its bankruptcy case, and the trustee for the debtor's estate entered into a settlement with the transferee in which the trustee released it from claims that "are property of the" debtor's estate. The personal injury claimants then sued the transferee in state court, alleging that the transferee was a "mere continuation" of the debtor and thus subject to their successor liability claims.

56. When the bankruptcy court denied the transferee's motion to enforce the order approving its settlement with the trustee, the district court reversed and the Third Circuit affirmed the district court's reversal. The Third Circuit, relying on Keene and cases finding that a corporation had standing under state law to assert alter ego claims, held that the personal injury claimants' successor liability claims against the transferee were property of the estate under the

successor liability claims holding third parties liable for its debts under most states' laws, including under the laws of New Jersey, North Carolina, New York, Pennsylvania, Delaware, and Virginia. As such, the Debtor had standing to bring successor liability claims against third parties as of the Petition Date.

2. Any Alleged Alter Ego and Successor Liability Claims Are Based on Facts and Legal Theories That Are Generally Available to Other Creditors of the Debtor

59. State law affords an individual creditor the right in some circumstances to recover a claim against an entity from a third party based on alter ego and successor liability theories. But once that entity files for bankruptcy, the creditor's pursuit of the claim against the third party is automatically stayed by section 362(a)(3) if it constitutes an act "to exercise control over" the same or similar claim that state law affords to the debtor to assert generally on behalf of its creditors. When the individual creditor's claim against the third party is based on facts and legal theories "generally available" to the debtor's other creditors, the stay applies because the individual creditor's pursuit of the claim interferes with, and thus constitutes an act "to exercise control over," the same or similar claim that is property of the estate. Accordingly, to avoid the automatic stay, the individual creditor's claim against the third party must be based on facts and legal theories of liability that are "personal" and "unique" to that creditor. Emoral, 740 F.3d at 880; Baillie Lumber, 391 F.3d at 1321.

60. In undertaking this inquiry, the Court "should be focused on [the creditor]'s alter ego claim itself—not [the creditor]'s underlying claim" against the debtor. Harrison, 320 F. Supp. 3d at 619. "The case law demonstrates that an alter ego or successorship claim is personal, and thus can be asserted by an individual creditor, only if the conduct that supports the claim is the same conduct that directly harmed the creditor in the underlying cause

establishing the former [the underlying tort claim] would benefit only [the tort claimants] as individual creditors, whereas the latter—that New Kerr-McGee is the alter ego of the relevant Tronox debtors and should therefore be charged with all its liabilities—would benefit all creditors of the Tronox debtors generally. See Emoral, 740 F.3d at 880. The facts necessary to prove that the Tronox debtors committed the underlying torts may be particular to the [tort claimants], but the facts necessary to impute that liability to New Kerr-McGee “would be . . . generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors.”

63. The court in Tronox emphasized that, “[i]n distinguishing derivative particularized claims exclusive to individual creditors, labels are not conclusive, as courts often try, but are not permitted, to plead around a bankruptcy.” 855 F.3d at 100. “[I]n such cases,” the court explained, “we are wary of putting form over substance. Thus, we look not only at the factual origins of the injury and, more importantly, into the nature of the legal claim.” Id. (citations omitted).

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lack of standing, finding their claims to be “similar in object and purpose” to claims the trustee should bring on behalf of all creditors:

The bankruptcy court noted that the trustee has a potential fraudulent conveyance action to challenge the legality of the transaction between [the debtor and the transferee]. See 11 U.S.C. § 548. All of the Sureties’ claims have this same focus. To make out their successor liability claim the Sureties rely heavily on exposing the [debtor/transferee] transaction to be fraudulent in fact. . . . Although the Sureties’ claims and the trustee’s fraudulent conveyance claim do not contain identical elements, they all share this same underlying focus. [Citing Litchfield.] *The Sureties’ causes of action are thus so similar in object and purpose to claims the trustee could bring in bankruptcy court that the Sureties lack standing to pursue these claims in district court. . . .*

It is clear that the trustee should have the first crack at challenging the [debtor/transferee] transaction—the trustee’s role is to bring suits such as these on behalf of all creditors. [Citing Steyr.]

187 F.3d at 441 (emphasis added). Accord Alvarez, 2012 WL 113567 at *5 (applying National American Insurance in holding that creditors’ alter ego and breach of fiduciary duty claims were automatically stayed by section 362(a)(3)); Sterne Agee Group, 2015 WL 1651146 at *7 (applying National American Insurance in holding that creditors’ successor liability claims were property of debtor’s estate to be pursued by trustee).

66. As the Fourth Circuit emphasized in National American Insurance, “[t]o allow selected creditors to artfully plead their way out of bankruptcy court would unravel the bankruptcy process and undermine an ordered distribution of the bankruptcy estate.” 187 F.3d at 142 (citing Litchfield). Enforcing the automatic stay to prevent individual creditors from pursuing liability claims against non-debtors based on alter ego or successor liability theories is essential to provide the estate with control over the res available for distribution to all claimants. As the Second Circuit pointed out in Tronox, preserving the estate’s control over such claims not

855 F.3d at 106.

8 In In re Garlock Sealing Technologies, LLC, No. 10-31607 (Bankr. W.D.N.C. 2010), the asbestos claimants' committee sought "Leave to Control and Prosecute Certain Claims as Estate Representatives" in order to challenge certain pre-bankruptcy restructuring transactions between one of the debtors and its affiliates. (Dkt. 2150) The committee's proposed complaint on behalf of the estate included (in addition to counts for breach of fiduciary duty, conspiracy and fraudulent conveyances) a count XVII ("Successor Liability") and a count XVIII ("Piercing the Corporate Veil"). Id. The debtors moved for authorization to enter into tolling agreements preserving such claims but delaying their prosecution. (Dkt. 2194). After a hearing on both motions, the court approved the debtor's entry into the proposed tolling agreements (Dkt. 2281) and denied the committee's motion. (Dkt. 2292).

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68. The bottom line is that the Plaintiffs here are in the same position as were the individual creditors in S.I. Acquisition, and Steyr, the bank in Litchfield, the former employees in Holcomb, the sureties in National American Insurance, the purchasers of empty lots in Alvarez, the retired partners in Coudert, the asbestos claimants in Keene, the diacetyl claimants in Emoral, and the toxic tort claimants in Tronox. Their successor liability and alter ego claims against the non-debtor affiliates are based on facts and theories generally available to the Debtor's other creditors and are therefore automatically stayed by section 362(a)(3) because they are acts to exercise control over property of the Debtor's estate.

D. The Plaintiffs' Fraudulent Transfer Claims Are Estate Property

69. Any fraudulent conveyance claims asserted by the Plaintiffs in their lawsuits are property of the Debtor's estate. Section 541(a)(7) of the Bankruptcy Code states that the debtor's estate is also comprised of "[a]ny interest in property that the estate acquires after the commencement of case." 11 U.S.C. § 541(a)(7) (emphasis added). Section 544(b) of the Bankruptcy Code authorizes the trustee, after the bankruptcy case is filed, to bring on behalf of the estate the same fraudulent conveyance actions that individual creditors could bring under state law prior to the filing of the bankruptcy case. Because the trustee's claims under section 544(b) must be brought on behalf of the estate, those claims constitute property in which the estate acquires an interest "after the commencement of the case" and are therefore property of the debtor's estate under section 541(a)(7). As Judge Mullen has observed, "in the Fourth

(cont.)

hearing, the court denied the standing motion and instead granted the debtors authority to enter into tolling agreements to preserve the alleged claims. (Dkt. 1154).

In In re Specialty Prods. Holding Corp., No. 10-11780 (Bankr. D. Del. 2010), the asbestos claimants' committee sought standing to prosecute, on behalf of the estates, claims against non-debtor affiliates—including alter ego and fraudulent conveyance claims—related to the debtors' pre-petition reorganization. (Dkt. 1799). While the court granted the committee standing to sue on behalf of the estates (Dkt. 4318), the committee never actually filed a complaint against the debtors' affiliates.

Circuit the rule is settled that Code § 362(a)(3) stays automatically—without a restraining order—a creditor’s claim against a third-party that the debtor can assert for the benefit of the estate” and this rule “has been embraced by other courts” to include “actions to recover fraudulent transfers.” Litchfield, 135 B.R. at 803 n.4⁹.

Notice

70. Notice of this Motion has been given to: (a) the Bankruptcy Administrator; (b) the top law firms representing talc claimants against the Debtor, as identified in the Debtor's chapter 11 petition; (c) counsel to the Plaintiffs; and (d) counsel to the Debtor's non-debtor affiliates, New JJCI and J&J. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

No Prior Request

71. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with the Chapter 11 Case.

WHEREFORE, the Debtor respectfully requests that the Court: (a) enter an interim and final order, substantially in the form attached hereto as Exhibit C, granting the relief requested herein; and (b) grant such other and further relief to the Debtor as the Court may deem proper.

Moreover, courts uniformly hold that, once the bankruptcy case is filed, [s]ection 544 transfers the right to recover fraudulent transfers from individual creditors to the bankruptcy trustee (or the debtor in possession) acting as a fiduciary on behalf of all creditors,” and as a result, “[t]he trustee has the exclusive right to bring a fraudulent conveyance action during the pendency of the bankruptcy proceedings.” Guttman, 458 B.R. at 258-59. See Nat’l Am. Ins. Co. v. Ruppert Landscaping Co., 187 F.3d 439, 441 (4th Cir. 1999) (“In fact, this circuit has explicitly held that until there is an ‘abandonment’ by the trustee of his [potential fraudulent conveyance action] the individual creditor has no standing to pursue it.”); M-Tek, 2016 WL 2997505 at *8.

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Bankruptcy Notice Filed in the MDL

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Dated: October 15, 2021

Respectfully submitted:

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EXHIBIT B

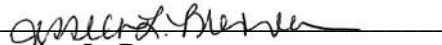
7-Eleven
Acme Markets, Inc.
Ahold Delhaize USA, Inc.
Albertsons Companies, Inc.
Alpha Beta Company
Associated Wholesale Grocers, Inc.
Associated Wholesaler Grocers, Inc.
Bartell Drug Company
Bashas', Inc.
Bausch Health Americas, Inc.
Bausch Health Companies Inc.
Bausch Health US, LLC
BCW LLC
Beautyland
Best Market of Astoria, Inc.
BI-LO, LLC
Bi-Mart Corporation
C&S Wholesale Grocers
C&S Wholesale Grocers, Inc.
Classic Pharmacy, Inc.
Cosentino Enterprises, Inc.
Cosentino Group, Inc.
Cosentino Price Chopper
Cosentino's Food Stores
Costco Wholesale Corporation
CVS Health Corporation
CVS Pharmacy, Inc.
Demoulas Super Markets, Inc.
Dierbergs Markets, Inc.
Discount Drug Mart, Inc.
Dollar Tree Stores, Inc.
DRI I, Inc.
Duane Reade, Inc.
Eckerd Corporation of Florida, Inc.
Family Dollar Stores
Fleming Companies, Inc.
Food 4 Less of California
Food 4 Less of Southern California, Inc.
Foodland (Sullivan Family of Companies
Foodland Super Market, LTD
Foot Locker, Inc.
Foot Locker Specialties, Inc.,
 individually and as successor-in-interest to F.W. Woolworth Co.
Foot Locker Specialty, Inc.
Four B Corporation d/b/a Balls Food Stores
Fred Meyer Stores, Inc.
Fruth Pharmacy, Inc.
Gerlands Food Fair, LLC
Gerlands, LLC
Giant Eagle, Inc.
Giant Food of Maryland, LLC
Giant Food Stores, LLC

Grocery Outlet Holding Corporation
Grocery Outlet, Inc.
HAC, Inc.
H-E-B, LP
Hughes Markets, Inc.
Hy-Vee, Inc.
Johnson & Johnson
Johnson & Johnson Consumer Inc.
K&B Corporation
K&B Louisiana Corporation
Kings Park Slope, Inc.
Kings Pharmacy
Kings Pharmacy Holdings, LLC
Kings Third Ave. Pharmacy, Inc.
Knorr Street ShopRite, Inc.
La Luz Market, LTD. Co.
Lewis Food Town, Inc.
Longs Drug Stores California, L.L.C.
Longs Drug Stores of Southern California, L.L.C.
Longs Drug Stores, L.L.C.
Lucky Stores, Inc.
Marc Glassman Inc.
Marc Glassman, Inc. d/b/a Marc's Store & Pharmacy
MBF Healthcare Holdings, Inc.
MBF Healthcare Management, LLC
Meijer, Inc.
MMG Equity Partners
Navarro Discount Pharmacies No. 5, LLC
Navarro Discount Pharmacies, LLC
OMJ Pharma, Inc.
Owens & Minor Distribution, Inc.
Owens & Minor, Inc.
Piggly Wiggly Carolina Co.
Piggly Wiggly Carolina Co., Inc.
Piggly Wiggly Companies, Inc.
Piggly Wiggly, LLC
Piggly Wiggly, LLC (subsidiary of C&S Wholesale Grocers)
PTI
PTI Royston LLC, A Georgia Limited Liability Co., d/b/a Pharma Tech Industries
PTI Union, LLC d/b/a Pharma Tech Industries
Publix Super Markets, Inc.
Raley's
Ralphs Grocery Company
Rite Aid
Rite Aid Corporation
Rite Aid Hdqtrs. Corp.
Rite Aid of New York City, Inc.
Rite Aid of New York, Inc.
Rite Aid of Pennsylvania, Inc.
Rite Aid of South Carolina, Inc.
Rouse's Enterprises, L.L.C.
Rouse's Enterprises, L.L.C. d/b/a Rouses Market
Safeway Inc.
Save Mart Supermarkets, Inc.

Schnuck Markets
Schnuck Markets, Inc.
Sedano's Market, Inc.
Shanti Pharmacy Corp.
Shop-Rite Supermarkets, Inc. a/k/a Shop Rite of Knorr Street
Smith Food and Drug Center, Inc.
Southeastern Grocers, Inc.
Stater Bros. Markets
Super Center Concepts, Inc. d/b/a Superior Grocers
Superior Grocers
SuperValu, Inc.
T. Levy Associates, d/b/a Beauty Land Enterprises
T. Levy Associates, Inc. t/d/b/a Beauty Land Enterprises
Target Corporation
The Bartell Drug Company
The Former Johnson & Johnson Consumer Inc.
The Kroger Company
The Stop & Shop Supermarket Company LLC
Thrifty Payless, Inc.
Thrifty White Drug
Tops Holding, LLC
Valeant Pharmaceuticals International
Valeant Pharmaceuticals International, Inc.
Valeant Pharmaceuticals North America LLC
Wakefern Food Corp.
Walgreen Co.
Walgreen Eastern Co., Inc.
Walgreen Pharmacy Strategies, LLC
Walgreens Boots Alliance, Inc.
Walmart Inc.
Wegmans Food Markets, Inc.
Winn-Dixie Stores, Inc.
Woolworth Corporation

CERTIFICATION OF SERVICE

I hereby certify that on October 15, 2021, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record. Parties may access the filing through the Court's system.

By: 
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Dated: October 15, 2021

EXHIBIT C

Proposed Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

LTL MANAGEMENT LLC,¹

Debtor.

Chapter 11

Case No. 21-30589 (JCW)

**INTERIM ORDER ENFORCING THE AUTOMATIC STAY
AGAINST TALC CLAIMANTS WHO SEEK TO PURSUE THEIR
CLAIMS AGAINST THE DEBTOR AND ITS NON-DEBTOR AFFILIATES**

This matter coming before the Court on the *Debtor's Emergency Motion to Enforce the Automatic Stay Against Talc Claimants Who Seek to Pursue Their Claims Against the Debtor and Its Non-Debtor Affiliates* (the "Motion"),² filed by the debtor in the above-captioned case (the "Debtor"); the Court having reviewed the Motion; the Court having considered the statements of counsel with respect to the Motion at an interim hearing before the Court (the "Interim Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to

¹ The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

A. The Court finds and concludes that the Plaintiffs’ efforts to continue talc-related litigation against J&J, Old JJCI, and other non-debtor affiliates of the Debtor are actions that are “against the debtor” or that seek to “recover a claim against the debtor” within the meaning of section 362(a)(1) of the Bankruptcy Code.

B. The Court further finds and concludes that the Debtor Talc Claims against J&J and New JJCI are inherently intertwined with talc-related claims against the Debtor, such that the Debtor is the real-party defendant to any such claims. Therefore, application or extension of the automatic stay of section 362 of the Bankruptcy Code to the Debtor Talc Claims against J&J and New JJCI is warranted because those actions or claims are “against the debtor” or seek “to recover a claim against the debtor” within the meaning of section 362(a)(1) of the Bankruptcy Code.

C. The Court further finds and concludes that any talc-related claims of the Plaintiffs against J&J, New JJCI or other non-debtor affiliates asserting fraudulent transfer or voidable transfer or conveyance claims, or alter ego, successor liability, vicarious liability or other theories of recovery through which the Plaintiffs would seek to assert the Debtor Talc

IT IS HEREBY ORDERED THAT:

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6. The Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this Order.

This Order has been signed electronically.
The Judge's signature and Court's seal appear
at the top of the Order.

United States Bankruptcy Court